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BEFORE THE FEDERAL ELECTION COMMISSION

OCT 22 2008

In the Matter of)
)
MUR 6027) CASE CLOSURE UNDER THE
ELIZABETH DOLE;) ENFORCEMENT PRIORITY SYSTEM
ELIZABETH DOLE COMMITTEE, INC.)
AND BRENT D. BARRINGER, IN HIS)
OFFICIAL CAPACITY AS TREASURER)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of the General Counsel scored MUR 6027 as a low-rated matter. In this case, the complainant, Jerry Meek, Chair of the North Carolina Democratic Party, alleges that senate candidate Elizabeth Dole and her principal campaign committee, Elizabeth Dole Committee, Inc. and Brent D. Barringer, in his official capacity as treasurer ("the Committee") began broadcasting a campaign television advertisement on or about June 9, 2008, and that the advertisement violated certain disclaimer provisions. Specifically, the advertisement allegedly failed to include a clearly identifiable image of the candidate, comprising at least 80% of the vertical screen height, as set forth in 11 C.F.R. § 110.11(c)(3)(ii)(B). Instead, according to complainant, the advertisement opened with an image of Dole comprising only approximately 70% of the vertical screen height, gradually increasing to approximately 90% of the vertical screen height. In addition, the complainant

1 alleges that no written statement ever appears in the advertisement identifying Ms. Dole or
2 stating that she approved the communication. See 11 C.F.R. § 110.11(c)(3)(ii) and (iii).
3 Instead, a written disclaimer appears at the end of the advertisement stating, in its entirety,
4 "Paid for by the Elizabeth Dole Committee, Inc."

5 In response, the Committee stated that it complied with the Commission's regulations
6 concerning the size of Ms. Dole's image in the original advertisement, at a total of 85.2% of
7 the screen height. The Committee stated that the ad was originally scheduled to run in High
8 Definition ("HD") format, which was well within the 80% parameters. The original
9 advertisement was down-converted for Standard Definition ("SD") channels, and in the
10 process, the image was automatically letterboxed, thereby reducing its overall dimensions.
11 Notwithstanding the advertisement's down conversion to SD format, the Committee
12 contends the image was still 85.2% of the screen height.

13 In addition, the Committee stated that the absence of the written statement of
14 approval in the original advertisement was due to vendor error. Upon learning of the
15 omission, the Committee immediately notified the vendor, who revised the disclaimer at the
16 end of the ad and re-edited Ms. Dole's initial image to compensate for the inadvertent
17 shrinkage when the HD master was down-converted to SD format. The Committee contends
18 that the revised version of the advertisement reflects an image of Ms. Dole at 95.8% and
19 80.8% of screen height, including the letterbox, which is within the parameters set forth in
20 the regulations.

21 It appears that the Committee and its vendor took immediate steps to correct the
22 omission of the written statement of approval by the candidate. Additionally, the disclaimers
23 that were provided in the advertisement, coupled with the photograph of the candidate, seem

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1 to indicate that the public would not have been misled as to who paid for the advertisement.
2 Thus, in furtherance of the Commission's priorities and resources, relative to other matters
3 pending on the Enforcement docket, the Office of General Counsel believes that the
4 Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler*
5 *v. Chaney*, 470 U.S. 821 (1985).


6 **RECOMMENDATION**

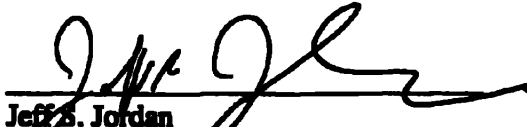
7 The Office of the General Counsel recommends that the Commission dismiss
8 MUR 6027, close the file effective two weeks from the date of the Commission vote, and
9 approve the appropriate letters. Closing the case as of this date will allow CELA and
10 General Law and Advice the necessary time to prepare the closing letters and the case file for
11 the public record.

12 Thomasenia P. Duncan
13 General Counsel

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16
17 10/22/08
18 Date

19 BY:

20 
21 Gregory R. Baker
22 Special Counsel
23 Complaints Examination
24 & Legal Administration

25 
26 Jeff S. Jordan
27 Supervisory Attorney
28 Complaints Examination
29 & Legal Administration

30 
31 Mary Beth deBeauvoir
32 Paralegal
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- 1 Attachment:
- 2 Narrative in MUR 6027

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4 **MUR 6027**

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6 **Complainant:** Jerry Meek, North Carolina Democratic Party

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8 **Respondents:** Elizabeth Dole;
9 Elizabeth Dole Committee, Inc.
10 and Brent D. Barringer, in his official capacity as treasurer

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12 **Allegations:** The complainant, Jerry Meek, Chair of the North Carolina Democratic
13 Party, alleges that on or about June 9, 2008, senate candidate Elizabeth Dole and her
14 principal campaign committee, Elizabeth Dole Committee, Inc., and Brent D. Barringer,
15 in his official capacity as treasurer ("the Committee"), began airing a broadcast television
16 advertisement that violated certain disclaimer provisions. Specifically, the advertisement
17 allegedly failed to include a clearly identifiable image of the candidate, comprising at
18 least 80% of the vertical screen height, as set forth in 11 C.F.R. § 110.11(c)(3)(ii)(B).
19 Instead, according to complainant, the image of Dole comprised approximately 70% of
20 screen height at the beginning of the ad, and gradually increased to approximately 90% of
21 screen height. In addition, complainant alleges that the advertisement failed to include a
22 written statement identifying the candidate or stating that she approved the message.
23 Instead, a written disclaimer appears at the end of the advertisement stating, in its
24 entirety, "Paid for by the Elizabeth Dole Committee, Inc."

25
26 **Response:** The Committee responded that it complied with the Commission's
27 regulations concerning the size of Dole's image. The Committee stated that the ad was to
28 originally run in High Definition ("HD") format and the image of Dole, at 85.2% of the
29 screen, was well within the 80% parameters. When it was down-converted for Standard
30 Definition ("SD") channels, the image was automatically letterboxed, thereby reducing
31 its overall dimensions. However, the Committee contends that despite the down-
32 conversion to SD, the image of the total was still 85.2% of the screen height. In addition,
33 the Committee stated that the absence of the written statement of approval in the original
34 ad was due to vendor error. The Committee immediately notified the vendor of the
35 omission, who revised the written disclaimer at the end of the ad and re-edited the initial
36 image of Dole to compensate for any size changes due to the down-conversion to SD.
37 The Committee contends that the revised version of the ad reflects Dole's image within
38 the parameters set forth in the regulations.

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40 **Date complaint filed:** June 20, 2008

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42 **Response filed:** July 29, 2008

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